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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Great Scott Broadcasting
Petition for Reconsideration
MB Docket No. 02-277
MM Docket No. 01-235
MM Docket No. 01-317
MM Docket No. 00-244
MB Docket No. 03-130**

Dear Ms. Dortch:

On behalf of Great Scott Broadcasting, I am transmitting herewith an original and eleven copies of its Petition for Reconsideration in connection with the above-referenced proceedings.

Should there be any questions concerning this matter, please contact the undersigned.

Sincerely,

Dennis P. Corbett

DPC/rjc
Enclosure

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
2002 Biennial Regulatory Review – Review of the)	MB Docket No. 02-277
Commission’s Broadcast Ownership Rules and)	
Other Rules Adopted Pursuant to Section 202 of)	
The Telecommunications Act of 1996)	
)	
Cross-Ownership of Broadcast Stations and)	MM Docket No. 01-235
Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations in Local)	
Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	
Definition of Radio Markets for Areas Not)	MB Docket No. 03-130
Located in an Arbitron Survey Area)	

To: The Commission

PETITION FOR RECONSIDERATION

Great Scott Broadcasting (“Great Scott”), by its attorneys and pursuant to Section 1.429 of the Commission’s Rules, hereby submits this Petition for Reconsideration respectfully requesting that the Commission reconsider and change the second sentence of revised Note 4 to Section 73.3555 of the Commission’s Rules (“Note 4”) as contained in Appendix H of the Report and Order and Notice of Proposed Rulemaking in the above-captioned proceeding released on July 2, 2003. *2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the*

Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking, FCC 03-127, released July 2, 2003 (“*Report and Order*”).

Specifically, Great Scott requests that the Commission: (i) change Note 4 to exempt from application of the multiple ownership rules all FCC Form 301 applications for minor change to an existing station that implement an approved change in an FM radio station’s community of license (“Community Change 301’s”), where the new community of license is located in the same radio market as the station’s original community of license; or (ii) change Note 4 to grandfather all Community Change 301’s within the same Arbitron Metro, where the application was pending prior to the Commission’s first notice, on July 2, 2003, that Note 4 was being modified to require such applications to demonstrate compliance with the new local radio ownership rule. Should the Commission decline to reconsider and change its rule as specified above, Great Scott requests that the Commission make clear that Note 4 will not force a divestiture of any *existing* facilities, and that the Commission will allow group owners to modify or withdraw pending Community Change 301’s in a manner that preserves the *status quo ante* with full grandfathered status.

I. Background.

Great Scott is a family-owned business which, under the new Arbitron-based local radio market definition, owns ten radio stations in the geographically expansive Salisbury-Ocean City, MD Arbitron Metro (the “S-OC Metro”), two of which are in the AM service and eight of which are in the FM service. Of the eight FM stations, six are Class A stations, the least powerful of full-power FM stations. This station group was in full compliance with the local radio ownership

rule in effect on June 1, 2003, and therefore would receive full grandfathered protection under the new local radio ownership rule. *Report and Order* at ¶ 484.¹

In 1995, Great Scott filed a petition for rulemaking to change the community of license for station WZBH(FM) ("WZBH"), Facility ID # 25003, from Georgetown to Millsboro, Delaware and upgrade the station from Class B1 to Class B. Georgetown and Millsboro are located within the same Arbitron Metro. *Georgetown and Millsboro, Delaware*, Petition for Rule Making, MM Docket No. 96-13 (filed Oct. 6, 1995). The Mass Media Bureau approved the change in 1996² and Great Scott filed the necessary Community Change 301. In timely response to a Commission staff letter, Great Scott amended the WZBH antenna structure registration with the Commission in December 2002. Great Scott's application has been ripe for grant since that time.

More than six months later, on July 2, 2003, the Commission released its new local radio ownership rule. The release of this document provided the first public notice that the Commission had chosen to modify Note 4 by requiring group owners to comply with the new local radio ownership rule when filing Community Change 301's.

According to the BIAfn Media Access Pro Radio Analyzer Database, the S-OC Metro includes forty stations that are licensed to communities in or are "home" to this market. Group owners in the market may own up to seven commercial radio stations, no more than four of

¹ The Great Scott group does not dominate this competitive market, registering an aggregate 27.7 AQH 12+ Metro Share in the Spring 2003 Arbitron ratings period according to the BIAfn Media Access Pro Radio Analyzer Database. Great Scott owns one other broadcast station, WPAZ(AM) in Pottstown, Pennsylvania.

² *Georgetown and Millsboro, Delaware*, 11 FCC Rcd 14445 (MMB 1996).

which may be in the same service. 47 C.F.R. § 73.3555(a). Great Scott's S-OC Metro station cluster exceeds the maximum allowed, under the new rule.

Recognizing that the dramatic change in the definition of local radio markets could significantly impact some station group owners that had lawfully pieced together ownership clusters, the Commission granted grandfathered status to existing station groups so that group owners not in compliance with the local radio ownership rule under the new market definition would not be forced to divest stations in order to come into compliance with the new rule.

Report and Order at ¶¶ 482-95. This bedrock concept was embedded in revised Note 4 to Rule 73.3555.

In that same revision to Note 4, however, the Commission singled-out Community Change 301's as applications that would be subject to the new Rule 73.3555 and not be grandfathered. As a result, Note 4 will preclude grant of WZBH's long-pending Community Change 301, absent a waiver.

II. Note 4 Should Not Apply to Community Change 301's Within the Same Metro.

In determining to revise its local radio ownership rules, the Commission "primarily rel[ied] on competition to justify the [new local radio market] rule." *Report and Order* at ¶ 239. Although the Commission provided some explanation for its decision to adopt an Arbitron-based market definition, it neither explained how it determined that the prior version of Note 4 of Section 73.3555 was no longer in the public interest, nor how the new version of Note 4 is in the public interest.³ Under the Arbitron-based local radio market definition methodology adopted by

³ Such a lack of explanation appears to ignore the agency's requirement that it provide a reasoned explanation when it changes its view as to what is in the public interest. *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).

the Commission, a Community Change 301 within the same Metro is deemed to have no impact on the concentration of radio ownership in that Metro. The grant of a station group's Community Change 301 within the Metro of one of its stations would not contravene or undermine the Commission's stated policy goals in revising the local radio ownership rule. Indeed, the threat of loss of grandfathered status will greatly discourage grandfathered group owners from filing such implementing applications, even where such applications would further the Commission's stated allotment priorities and thereby benefit the public interest. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

Great Scott, therefore, respectfully requests that the Commission change Note 4 to exempt from the purview of Section 73.3555 of the Commission's rule Community Change 301's within the same Arbitron Metro.

III. Note 4 Should Grandfather Long-Pending Community Change 301's.

In the event the relief sought in Part II above is not granted, Great Scott proposes, alternatively, that in situations like Great Scott's, where a group owner's Community Change 301 has been pending for years prior to the first notice of the modification of Note 4, that application should be permanently grandfathered. Indeed, a failure to grandfather that application would neither further the public interest nor serve any articulated Commission goal.

The Commission has expressed concern that a shift to an Arbitron-based radio market definition might allow group owners to "game" the system by "manipulat[ing] Arbitron market definitions for purposes of circumventing the local radio ownership rule." *Report and Order* at ¶ 278. However, where, as here, the change in community of license was first sought more than seven years before the Commission made its change in market definition and, indeed, in the year

before adoption of the Telecommunications Act of 1996, the proposed change could in no way have been motivated by an intent to “game” the recent change in market definition.

Faced with similar circumstances when it decided to attribute local marketing agreements (LMAs) to group owners under its local television ownership rule, the Commission recognized the “strong equities against requiring [parties to the LMAs] to divest their interests in these LMAs and upset the settled expectations established by these plans and investments.” *Review of the Commission’s Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, 14 FCC Rcd 12903 at ¶ 144 (1999). As a result, the Commission provided extensive grandfathered status to LMAs that were entered into prior to the adoption date of the Commission Notice that first announced the proposed LMA attribution rule. *Id.* at ¶ 138. “It was on this date that the Commission gave clear notice that it intended to attribute television LMAs in certain circumstances.” *Id.* at ¶ 139.

Here, the Commission should modify Note 4 and grant permanent grandfathered status to station groups whose owners have filed a Community Change 301 within the same Arbitron Metro, so long as that application was filed before the Commission first “gave clear notice” that it intended to change Note 4 and the scope of Section 73.3555.

As with station owners who entered into LMAs prior to notice of a proposed change, the station group owners seeking changes in community of license prior to July 2, 2003 acted “in good faith reliance on [the Commission’s] previous rules at the time,” *Id.* at ¶ 138. These group owners filed their applications without notice that such action might some day adversely affect otherwise grandfathered stations, and they should not be later penalized for a change in the basic local radio ownership rule of which they had no notice. In Great Scott’s case, the application for

minor change was filed not only prior to the first notice of the change to Note 4, but years before the first notice of any of the above-captioned proceedings.

Therefore, the Commission should permanently grandfather in Note 4 Community Change 301's where the application was filed before the Commission gave notice of the change in its regulation on July 2, 2003.

IV. At a Minimum, the Commission Must Allow Group Owners to Modify or Withdraw Pending Community Change 301's and Retain Existing Facilities.

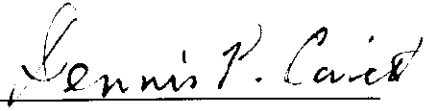
Note 4 states that Section 73.3555(a)-(c) of the Commission's rules "will not be applied so as to require divestiture, by any licensee, of existing facilities." 47 C.F.R. § 73.3555, Note 4. At a minimum, therefore, if none of the relief sought in Parts II and III above is granted, there must be a mechanism available to group owners with Community Change 301's pending as of the effective date of the rule whereby these applications may be modified or withdrawn so as to avoid any adverse outcome to any existing facility's grandfathered status. Under this scenario, WZBH would modify or withdraw its minor change application and WZBH would retain its Class B1 facilities at Millsboro. Divestiture would not be appropriate under any circumstances in such a case. Stated another way, a community of license change proposed some seven years ago cannot equitably or lawfully be allowed to adversely affect the grandfathered status of the existing WZBH facilities. Under this scenario, the existing technical facilities would remain intact and there would be no conceivable reason for denying *grandfathered status*. While Great Scott realizes it runs the risk of stating the obvious on this particular issue, it did not want to overlook bringing this matter to the Commission's attention to the extent any clarification is deemed necessary.

V. Conclusion

For the foregoing reasons, Great Scott respectfully urges the Commission to reconsider revised Note 4 to Section 73.3555 of the Commission's Rules as set forth above.

Respectfully submitted,

GREAT SCOTT BROADCASTING

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